

REMARKS

The Office Action issued on November 19, 2007 rejected claims 1-3, 5-8, 11-16, 18-24, 27, 29-39, and 42-44¹ under 35 USC § 102(e) as anticipated by US Application Publication No. 2001/0041991 by Segal, et al. (“Segal”). The remaining claims (4, 9-10, 17, 25-26, 28, and 40-41) were rejected under 35 U.S.C. § 103(a) as obvious over the combination of Segal and US Application Publication No. 2002/0010679 by Felsher (“Felsher”).

By this Response and enclosed evidence, Applicants remove the Segal reference by presenting evidence of Applicants’ invention of the claimed subject matter prior to the filing date of that reference. As shown by the attached Declaration of Alan Haaksma Under 37 CFR § 1.131, the inventors conceived of the claimed invention and reduced it to practice prior to the filing date of the Segal reference. This fact excludes the Segal reference from the body of prior art under 35 USC § 102(e).

Counsel and the Assignee made of record by the enclosed Statement Under 37 CFR § 3.73(b) have sought the enclosed evidence to support this argument for several months, but the last of it was just received today. Since Assignee was not in possession of the evidence necessary to present this argument, it could not have been presented the argument any earlier.

An Information Disclosure Statement identifying a new reference is presented herewith. A mention of that patent (U.S. Patent 5,659,741 to Bowie) was discovered in the materials retrieved in pursuit of evidence to support the enclosed Declaration.

In light of the new received evidence of prior invention, Assignee withdraws the pending appeal and requests reconsideration of the Application by the Examiner. Since the Segal reference has been removed, the rejections presented in the Office Action have been overcome.

¹ Claims 43-44 are discussed in the narrative under this anticipation rejection, though they are not expressly characterized as rejected in the Office Action.

Applicants believe that the application is in condition for allowance, and prompt action by the Office toward that end is respectfully requested. In the event any issue(s) remain, the undersigned invites the Examiner to contact him by telephone to expedite the examination of this application. Thank you.

Respectfully submitted,

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